



LEWIS KING

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February 8, 2008

Via Certified Mail
Return Receipt Requested

Appeal of Enforcement Order
TDEC-OGC
L & C Tower, 20th Floor
401 Church Street
Nashville, Tennessee 37243-1548

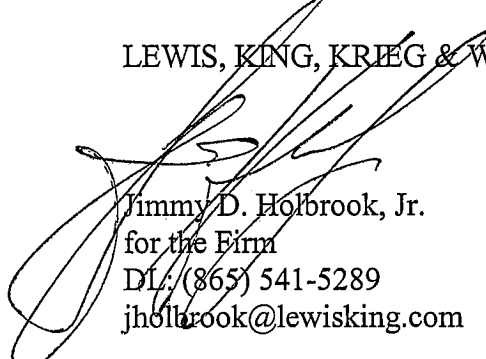
Re: Petition for Appeal
Director's Order NO. WPC07-0264
Knox County, Tennessee

Dear Sir or Madam:

Enclosed please find Sequoyah Limited, LLC's Petition for Appeal of Commissioner's Order and Assessment and Request for Hearing Before the Tennessee Water Quality Control Board as referenced above. If you have any questions, please do not hesitate to contact me.

Very truly yours,

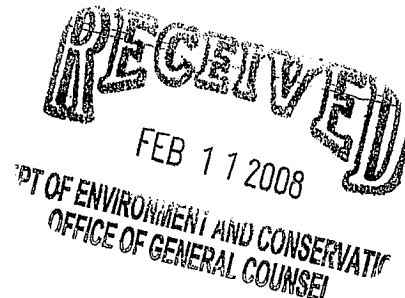
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JDH/maa

Enclosure

cc: Cary Ratliff (with enclosure)



**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
SEQUOYAH LIMITED, LLC, and)	
D. R. PHILLIPS, LLC)	
)	
RESPONDENTS.)	CASE NO. WPC07-0264

**PETITION FOR APPEAL OF COMMISSIONER'S ORDER AND ASSESSMENT
AND REQUEST FOR HEARING BEFORE THE TENNESSEE WATER
QUALITY CONTROL BOARD**

Sequoyah Limited, LLC, (hereinafter "Respondent") hereby files this Petition for Appeal of the Order and Assessment dated January 14, 2008, and requests a hearing before the Tennessee Water Quality Control Board pursuant to Tennessee Code Annotated §§ 69-3-101, et seq., Tennessee Code Annotated § 69-3-109, Tennessee Code Annotated § 69-3-110, and Tennessee Code Annotated § 4-5-301, et seq. By this Petition and request for hearing, Respondent appeals the "Director's Order and Assessment," dated January 14, 2008 ("Order") and requests that the Water Quality Control Board ("Board") conduct a hearing on this Petition.

BACKGROUND

1. The Director, Division of Water Pollution Control, on behalf of the Commissioner of the Tennessee Department of Environment and Conservation ("TDEC") issued an order and assessment against Respondent dated January 14, 2008.

2. Respondent received the Order and Assessment on or about January 18, 2008.

3. Pursuant to Tennessee Code Annotated § 69-3-109, this Petition has been timely filed.

4. Respondent, Sequoyah Limited, LLC, is a Tennessee Limited Liability Company in good standing doing business in Knox County, Tennessee.

RESPONDENT'S GROUNDS FOR APPEAL

I. RESPONDENT IS NOT THE OWNER OF THE SUBJECT COMMERCIAL DEVELOPMENT LOCATED ON OR ABOUT SCHAEFFER ROAD IN KNOX COUNTY, TENNESSEE.

5. As confirmed by the real property records contained in the Register of Deeds' Office for Knox County, Tennessee, the Respondent is not now nor has it ever been the owner of the subject real property.

II. RESPONDENT RESPONDED PROMPTLY TO ALL NOTICES OF VIOLATIONS AND PERFORMED CORRECTIVE ACTION IN ACCORDANCE WITH ITS REASONABLE UNDERSTANDING OF ITS DISCUSSIONS WITH DIVISION PERSONNEL.

6. Respondent asserts that the facts as listed in the Director's Order and Assessment confirm that the Respondent promptly responded to every NOV issued regarding the subject property. Respondent further promptly met with and otherwise discussed with division personnel various corrective action plans which it then implemented to the best of its understanding of its communications with division personnel. The Respondent has no record of receiving an alleged e-mail, dated November 19, 2007, from the division.

7. It has been and continues to be the standard practice of the Respondent to comply with TDEC regulations and promptly respond to any concerns of TDEC personnel and ultimately to promptly implement any corrective action that may be necessary on any given project. The prompt responses and implementation of corrective action as understood by the Respondent in

regards to the subject property demonstrate Respondent's policy of TDEC compliance. The Respondent wants to continue to cooperate with TDEC in regards to the subject property going forward.

III. NO SIGNIFICANT ENVIRONMENTAL HARM HAS BEEN SHOWN TO HAVE OCCURRED DUE TO ANY OF THE ALLEGED VIOLATIONS.

8. Respondent avers that there has been no showing of any significant environmental impact of the alleged technical violations asserted against the Respondent. There has been no known loss or destruction of wildlife, fish, or other aquatic life, nor the significant lowering of any water quality of Plum Creek such that the health and safety of wildlife or the public at large would be affected.

IV. THE DIRECTOR ABUSED HIS DISCRETION AND ACTED ARBITRARILY AND CAPRICIOUSLY IN ASSESSING A CIVIL PENALTY OF \$20,500.00 FOR THE VIOLATIONS ALLEGED IN THE ORDER AND ASSESSMENT AND \$617.12 IN DAMAGES.

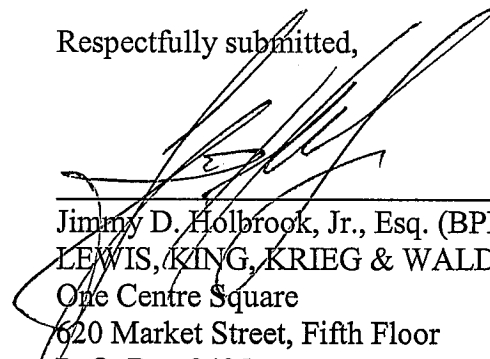
9. The civil penalty of \$20,500.00, as well as the \$617.12 in damages for the violations alleged is unduly burdensome, arbitrary, capricious, and an abuse of discretion.

WHEREFORE, Respondent hereby requests the following relief:

1. That the division, Office of General Counsel, and other TDEC personnel meet with the Respondent to address and negotiate appropriate further corrective action to be required by the division as well as the appropriateness and/or necessity of any civil penalties, damages, or other relief.

2. If the negotiations requested above do not result in a mutually agreeable resolution of this Order and Assessment, that the Board hold a hearing on this appeal.

Respectfully submitted,


Jimmy D. Holbrook, Jr., Esq. (BPR #018038)

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(865) 546-4646

Attorney for Respondent, Sequoyah Limited, LLC

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served on the following counsel of record in the manner of service indicated below:

☒ By placing postage prepaid envelope in United States Mail Service, addressed to:

The Honorable Jim Fyke, Commissioner
Tennessee Department of Environment and Conservation
L&C Annex, 1st Floor
401 Church Street
Nashville, TN 37243

Mr. Paul E. Davis, P.E., Director
Division of Water Pollution Control
Technical Secretary – Tennessee Water Control Board
L&C Annex, 6th Floor
401 Church Street
Nashville, TN 37243

Patrick N. Parker, IV, Esq.
Office of General Counsel
Tennessee Department of Environment and Conservation
L&C Tower, 20th Floor
401 Church Street
Nashville, TN 37204

This the 8th day of February, 2008.


Jimmy D. Holbrook, Jr.